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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,782	05/02/2001	Robert D. Hutchison	11-902	4594

7590 02/26/2003

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 02/26/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

AS12

Office Action Summary

Application No.

09/846,782

Applicant(s)

HUTCHISON, ROBERT D.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7,8,10,11 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-6, 8, 9, 18, 19, 21, 23-27, 31, and 32 are rejected under 35 USC 102(b) as being anticipated by WO 99/55954 issued to Oakey et al.

Oakey discloses a floor covering comprising an inverted, tufted primary backing which is bonded to a backing structure (abstract). A primary backing is tufted in a conventional manner to produce a top cloth, which is then inverted so that the tuft backloops form a wear surface (page 6, lines 4-6 and Figure 1). The tufted pile may be in the form of loops or cut pile (page 6, lines 6-7). The tuft loops are then coated with a resin precoat, which may be EVA or acrylic latex (page 7, lines 1-15). A backing layer of rubber, PVC, polyurethane, bitumen, or EVA and a filler, such as calcium carbonate is applied to the precoat layer (page 9, lines 10-16 and Example 3). A reinforcement web of fiberglass, ceramic, or polyester fibers is employed to stabilize the floor covering (page 11, lines 10-13). Additionally, a secondary backing nonwoven or woven fabric may be employed (page 12, lines 4-6). The floor covering may be in roll form (i.e., broadloom) or modular tile form (page 6, lines 20-21).

With respect to the claim limitation that the primary backing and tuft backloops have different colorings to afford different aesthetic effects, it is noted that Oakey teaches said floor

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covering having an inverted tufted top layer can produce "sophisticated multi-color designs" (page 5, lines 7-9). Additionally, it is asserted that primary backings are tuft yarns are conventionally of different yarn or fiber types (i.e., material, denier, texture, color, etc.). Thus, it can be seen that said claims are anticipated by the cited Oakey reference.

3. Claims 1, 3-5, 9, 20, 21, 23, 24, and 27 are rejected under 35 USC 102(b) as being anticipated by US 4,563,378 issued to Roth.

Roth discloses an automotive carpet comprising a primary backing of woven ribbons that is tufted with yarn and a bonding layer applied to the backside (abstract). The wear surface is comprised of very short loops and the backside comprises nonloop pile yarns (i.e., inverted tufted primary backing) (col. 4, lines 10-19 and Figures 3 and 4). The ribbons of the primary backing may be the same color as the tuft yarns or not (col. 4, lines 34-40). A backing of EVA bonding layer is applied to the cut pile yarn surface (col. 5, lines 37-40). Additionally, a non-skid layer of EVA and calcium carbonate may be applied (col. 5, lines 48-53).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 10, 15, 16, 20, 22, and 28 are rejected under 35 USC 103(a) as being unpatentable over the cited Oakey reference or the cited Roth reference.

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Oakey is silent with respect to the material employed for the primary backing. Hence, one must rely on convention in the art. Similarly, Roth does teach a woven primary backing, but fails to teach it is made of polypropylene or that a UV stabilizer is included. It is well-known in the art that the most common primary backing is a polypropylene tape or ribbon woven scrim fabric. Additionally, it is well-known that nonwoven fabrics are alternative fabrics for primary backings. Applicant is hereby given Official Notice of these facts. As such, it would have been obvious to a person having ordinary skill in the art to utilize a conventional primary backing of a woven polypropylene fabric or a nonwoven fabric. Such a modification would have been motivated by the desire to employ readily available materials. The Examiner notes that the facts asserted to be common and well-known are capable of instant and unquestionable demonstration as being well-known. To adequately traverse such a finding, an Applicant must specifically point out the supposed errors in the Examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.

Also, it would have been obvious for one skilled in the art to employ a nonwoven primary backing comprising nylon and polyester, since said fibers are well-known in the art to be suitable for floor materials. Applicant is hereby given Official Notice of this fact. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Furthermore, it would have been obvious to one skilled in the art to employ a ultraviolet stabilizer to the fibers of a floor wear surface, especially in flooring which is exposed to sunlight (i.e., car mats, track mats, etc.) in order to prevent degradation of the floor material.

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6. Claims 7, 11, and 12 are rejected under 35 USC 103(a) as being unpatentable over the cited Oakey reference.

It is noted that Oakey does not teach a reinforcing scrim of woven polypropylene. However, it is asserted that said scrim would have been obvious to one skilled in the art, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

7. Claims 7, 11, and 12 are rejected under 35 USC 103(a) as being unpatentable over the cited Roth patent in view of the cited Oakey reference.

Roth is silent with respect to the use of a reinforcing scrim. However, as noted above, Oakey teaches such a reinforcement. Hence, it would have been obvious to one skilled in the art to employ a reinforcing scrim in the invention of Roth in order to improve the dimensional stability of the floor covering. Additionally, it would have been obvious to employ a woven polypropylene scrim as the reinforcing scrim of Oakey, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

8. Claims 13, 14, and 29 are rejected under 35 USC 103(a) as being unpatentable over the cited Oakey reference.

Oakey teaches a nonwoven secondary backing fabric, but fails to teach said nonwoven is needlepunched and made of nylon and polypropylene fibers. However, said claims are deemed obvious over the cited prior art in that needlepunching is a well-known method of forming an inexpensive nonwoven fabric. Additionally, nylon and polypropylene fibers are commonly employed in carpeting. Applicant is hereby given Official Notice of these facts. Thus, it would

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have been obvious to employ the presently claimed nonwoven secondary backing fabric since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

9. Claims 13, 14, and 29 are rejected under 35 USC 103(a) as being unpatentable over the cited Roth patent in view of the cited Oakey reference.

Roth is silent with respect to a secondary backing fabric. However, as noted above, Oakey teaches the use of such a fabric. Hence, it would have been obvious to one skilled in the art to employ a secondary backing nonwoven fabric in order to produce a floor covering with enhanced dimensional stability and improved handling properties.

10. Claims 17 and 30 are rejected under 35 USC 103(a) as being unpatentable over the cited Oakey reference.

Oakey teaches a backing layer of PVC, but not a precoat layer of PVC. However, it is asserted that said claims would have been obvious to one skilled in the art. Specifically, it would have been obvious to employ the same polymeric material for both the precoat layer and the backing layer in order to minimize the number of different materials employed, thereby improving recyclability and in order to create a strong bond between said precoat and backing layer.


Conclusion

11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
PRIMARY EXAMINER